

Disposition of the Independent Review Panel

Complainant: Ricardo Lopes

Date: December 17, 2004

IRP Case: A 2003.180

MDPD Case: IA 2003-0155



The Independent Review Panel (IRP) met on December 17, 2004, for the purpose of publicly reviewing the complaint made by Ricardo Lopes against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Incident

On Friday, May 23, 2003, around 1:45 p.m., Mr. Lopes was pulled over by a plainclothes officer (later identified as Officer Carus) driving a black car, who said that Mr. Lopes gave him the finger. The officer demanded to see Mr. Lopes' license and registration. Mr. Lopes told Officer Carus that he did not have the right to abuse his power just because he is an officer. Mr. Lopes stated that, although the officer said he was a detective with the narcotics unit, he was uncomfortable and requested that Officer Carus call a uniformed officer to handle the situation. Both Mr. Lopes and Officer Carus called for a marked police unit.

Uniformed Officer Joy Mellies responded to the scene. Officer Carus asked Officer Mellies for her traffic ticket booklet and cited Mr. Lopes for improper lane change. He also arrested Mr. Lopes for obstruction of justice for failing to show driver's license, but released him on the scene after Mr. Lopes signed a Promise To Appear.

B. Allegations

1. Officer Carus abused his authority by stopping Mr. Lopes without cause.
2. Officer Carus used excessive force when he shoved Mr. Lopes against the vehicle, causing soreness to his back/shoulder area.
3. Officer Carus threatened Mr. Lopes by stating, "Mira Papi, tienes suerte otro te lleva y te pega un tiro, which translates into English as "Look, consider yourself lucky. Someone else would take you and shoot you."
4. Officer Carus called him a jerk two times and told him to shut up ten times.
5. Officer Carus grabbed Mr. Lopes' cellular telephone from his hand and threw it into Mr. Lopes' vehicle.
6. Mr. Lopes told Officer Carus and Officer Mellies that the handcuffs on his wrists were too tight, and the officers failed to take corrective action.

C. Disposition of the Independent Review Panel

Allegation 1: Officer Carus abused his authority by stopping Mr. Lopes without cause.

UNFOUNDED. MDPD policy authorizes police officers in plainclothes to make traffic stop. Mr. Lopes pled Nolo contendere to the charge of Improper Lane Change on August 21, 2003.

Allegation 2: Officer Carus used excessive force when he shoved Mr. Lopes against the vehicle, causing soreness to his back/shoulder area.

INCONCLUSIVE. The Panel found insufficient evidence to confirm or refute the allegation.

Allegation 3: Officer Carus threatened Mr. Lopes by in Spanish: "Look, consider yourself lucky. Someone else would take you and shoot you."

INCONCLUSIVE. The Panel found insufficient evidence to confirm or refute the allegation. It is the word of Mr. Lopes verses the word of Officer Carus. There were no witnesses present at the time of the alleged comment.

Allegation 4: Officer Carus called him a jerk two times and told him to shut up ten times.

INCONCLUSIVE. The Panel found insufficient evidence to confirm or refute the allegation. The four witnesses did not hear Officer Carus make the comments while they were on the scene.

Allegation 5: Officer Carus grabbed Mr. Lopes' cellular telephone from his hand and threw it into Mr. Lopes' vehicle.

INCONCLUSIVE. The Panel found insufficient evidence to confirm or refute the allegation. It is the word of Mr. Lopes verses the word of Officer Carus. There were no witnesses present at the time.

Allegation 6: Mr. Lopes told Officer Carus and Officer Mellies that the handcuffs on his wrists were too tight, and the officers failed to take corrective action.

INCONCLUSIVE. The Panel found insufficient evidence to confirm or refute the allegation. The four witnesses did not hear Officer Carus make the comments while they were on the scene.

D. Other Findings

Officer Carus used his discretionary authority as described in MDPD Departmental Manual Chapter 12-01A (Law Enforcement Operations) when he chose to exercise the options provided in the Manual for alternatives to arrest: Issue a promise to appear for an arrestable traffic citation. When Officer Carus found out from backup Officer Mellies that about ten calls were holding in the area, he chose to release Mr. Lopes on the scene so officer Mellies could go back in service.

The complaint was concluded on December 16, 2004.

Independent Review Panel

Staff Recommendation to the Panel

December 16, 2004

Complaint No. A2003.180

MDPD Case: IA 2003-0155

Name of Complainant: Ricardo Lopes

Accused Party: Miami-Dade Police Department (MDPD), Officer Omar Carus, Detective assigned to Police Legal Bureau.

Materials Reviewed: Grievance Report Form, Correspondence, Staff Notes, Departmental Response, and relevant sections of the MDPD Departmental Manual

Complaint: Mr. Lopes wrote the Independent Review Panel to complain about the actions of Officer Carus. On Friday, May 23, 2003, around 1:45 p.m., Mr. Lopes was pulled over by a plainclothes officer (later identified as Officer Carus) driving a black car, who said that Mr. Lopes gave him the finger. The officer demanded to see Mr. Lopes' license and registration, including Social Security card. Mr. Lopes told Officer Carus that he did not have the right to abuse his power just because he is an officer. Mr. Lopes stated that the officer got angry and asked what country was he from. Mr. Lopes replied that he was an American citizen. Mr. Lopes then apologized and tried to reason with the officer. Instead Officer Carus got louder, told Mr. Lopes to shut up, and hand over his license and registration. Mr. Lopes stated that, although the officer said he was a detective with the narcotics unit, he was uncomfortable and requested that Officer Carus call a uniformed officer to handle the situation.

The officer then stated "Mira Papi, tienes suerte, otro te lleva y te pega un tiro, which translates to "Look, consider yourself lucky. Someone else would take you and shoot you." Mr. Lopes stated that the officer asked for his registration and license, again. Mr. Lopes repeated his previous request to have a uniformed officer present. The officer then remarked, "This is your last chance now I am going to arrest you." While the officer went to retrieve his handcuffs, Mr. Lopes called 911. Mr. Lopes tried describing his location and the unidentified officer. The officer then snatched the phone from Mr. Lopes, threw it in the car and handcuffed his left arm.

Three other officers who had been dining in a nearby restaurant, helped push Mr. Lopes against the car causing injury to his shoulder, so he could be handcuffed. A female officer (Joy Mellies) finally arrived on the scene and asked Mr. Lopes for his license and registration. Mr. Lopes was still in handcuffs but told the officer that his license and registration were in his pocket. Officer Carus asked the female officer for the traffic ticket booklet and issued two tickets to Mr. Lopes: 1) improper change of lanes and 2) obstruction of justice for failing to show driver's license.

Departmental Response: MDPD Internal Affairs Investigation 2003-0155

Lieutenant Albuerne, Officers Felsen, and Baquero from the Florida Attorney General's Office were patrons at the Roadhouse Grill at the time of the incident. They exited the restaurant to offer assistance to Officer Carus.

MDPD investigated the following allegations:

1. Officer Carus abused his authority by stopping Mr. Lopes without cause.
2. Officer Carus used excessive force when he shoved Mr. Lopes against the vehicle, causing soreness to his back/shoulder area.
3. Officer Carus threatened Mr. Lopes by stating, "Mira Papi, tienes suerte otro te lleva y te pega un tiro, which translates into English as "Look, consider yourself lucky. Someone else would take you and shoot you."
4. Officer Carus called him a jerk two times and told him to shut up ten times.
5. Officer Carus grabbed Mr. Lopes cellular telephone from his hand and threw it into Mr. Lopes's vehicle.
6. Mr. Lopes told Officer Carus and Officer Mellies that the handcuffs on his wrists were too tight, and the officers failed to take corrective action.

Statement of Officer Carus:

- Officer Carus said that Mr. Lopes was driving erratically and he felt that needed to stop him. "I haven't pulled someone over in at least seven years, but I felt that I had to pull this guy over because there was something obviously wrong with this guy. He was driving very erratically."
- Officer Carus showed his police ID and asked Mr. Lopes for his license, registration, and proof of insurance. Mr. Lopes refused to produce his identification and told Officer Carus that he did not have to because he did not know who he (Carus) was.
- Officer Carus retrieved his radio from his trunk and requested a marked MDPD unit to respond on the scene because he did not have any citations.
- Officer Carus stated that he was in fear for his safety when he saw Mr. Lopes rummaging through his car. Officer Carus remarked that he did not know if Mr. Lopes had a weapon in his vehicle but he could see him talking on the phone. It was then that Officer Carus decided he "had to take action: I have to get him out of the car because I'm in fear for my safety."
- Officer Carus placed the handcuffs on Mr. Lopes' left wrist. Mr. Lopes grabbed on to the steering wheel, not allowing Officer Carus to move him. Officer Carus said, "Sir, I'm placing you under arrest for refusing to show me your driver's license, so please step out of the vehicle." Mr. Lopes did nothing and still refused to show his license and registration. Officer Carus convinced Mr. Lopes to exit the vehicle. When Mr. Lopes was out Officer Carus took his phone from his right hand and placed it in the front seat of Mr. Lopes' car. He then placed the other cuff on Mr. Lopes.

- Officer Carus stated that three men (later identified as officers) walked out of the Roadhouse Grill restaurant and assisted him with Mr. Lopes. The officers stated that they witnessed everything. They helped hold and place the other cuff on Mr. Lopes.

Statement of Officer Mellies:

- Officer Mellies stated it is normal procedure for the backup officer to ask the officer on the scene what he/she is going to do because the backup officer is present for the officer's safety and to assist the officer who requested backup. Officer Mellies added that Officer Carus requested back up and she responded.

The MDPD Disposition Panel made the following findings:

Allegation # 1: NOT SUSTAINED

Officer Carus stated that Mr. Lopes' erratic driving caused him to take evasive action in order to avoid hitting Mr. Lopes. Furthermore, Mr. Lopes continued driving erratically cutting other drivers off, as well as Officer Carus. After failed attempts to get Mr. Lopes to produce his driver's license and other documentation, Officer Carus retrieved his handheld radio and requested that a marked unit respond.

Allegation #2: NOT SUSTAINED

Ms. Rossetti, an independent witness, advised that she never exited the restaurant, but she looked outside after the other witnesses left the restaurant. The other witnesses stated that the handcuffing conducted by Officer Carus was routine procedure and Officer Carus did not push the complainant against the car.

Allegation #3: NOT SUSTAINED

Both Officer Mellies and the independent witnesses did not hear Officer Carus make the comment that "someone else would take you and shoot you" while they were on the scene.

Allegation #4: NOT SUSTAINED

Officer Carus denied the allegation that he was discourteous to the complainant by calling him a jerk two times and telling him to shut up ten times. Officers Mellies and the independent witnesses stated that they did not hear Officer Carus make the comments while they were on the scene.

Allegation #5: NOT SUSTAINED

Officer Carus advised that, after he grabbed Mr. Lopes' cell phone, he placed it on the front seat of Mr. Lopes' vehicle, placed the handcuffs on him and positioned him on the vehicle. There were no witnesses present.

Allegation #6: NOT STAINED

Officers Carus and Mellies denied the allegation. According to the independent witnesses, they did not hear Mr. Lopes complain that the handcuffs were too tight.

Staff Remarks:

Mr. Lopes pled Nolo contendere to the charge of Improper Lane Change on August 21, 2003. Adjudication was withheld.

IRP staff sent Mr. Lopes a copy of the MDPD investigative report on January 27, 2004, with the request that he advise Panel staff by February 12, 2004 whether or not it satisfied his complaint. At that time the criminal charge was still pending.

Mr. Lopes contacted IRP staff person Carol Boersma several times during February and March, regarding his pending trial. On April 1, 2004 Mr. Lopes asked Ms. Boersma to assist his attorney by getting specific information from Internal Affairs. Ms. Boersma advised Mr. Lopes that the IRP would proceed with the review of his complaint through a committee meeting, when the charges were resolved. Ms. Boersma explained that all of his concerns would be discussed at a committee meeting and at that time the committee could make requests to the Department. Mr. Lopes was not satisfied with Ms. Boersma's response and did not request a committee meeting. There was no contact from the complainant after April 1.

A disposition of Nolle Pros was made on April 22, 2004 for Resisting without violence.

Quotes from MDPD Departmental Manual:

Traffic Enforcement Chapter 28-01

"Enforcement action shall be taken when violations of State traffic laws are observed. Officers may use discretion, when appropriate. The responsibility for enforcing traffic laws and regulations is shared by all sworn personnel."

"Traffic enforcement action will be taken upon detection of an illegal and potentially hazardous act, without regard to such factors as quantitative enforcement activities (ticket quotas), attitude, intent or excuse... Enforcement action consists of a verbal warning, citation or an arrest."

"Vehicle stops pose potential risks to police personnel and the public, and must be conducted with caution and forethought."

“...nonuniformed police officers are authorized to stop vehicles and their occupants to enforce traffic laws... Whenever possible, nonuniformed officers shall request assistance from a uniformed officer with a marked unit prior to conducting a stop.”

“Nonuniformed officers conducting traffic stops will conspicuously display departmental credentials to the vehicle occupants and announce that they are police officers.

“When conducting a traffic stop, officers shall advise the dispatcher of location and vehicle tag number.”

Alternatives to Arrest Chapter 12-01 A4

“There may be instances when a crime may occur and no physical arrest will be made. The decision to arrest will be guided by law, departmental policy, and facts of the situation. Even when a physical arrest is possible, the following alternatives may be employed as the officer deems suitable:

- a. Issue a verbal warning if the offense is minor and of a general nature without a particular victim; e/g/disorderly intoxication.”
- b. Issue a promise to appear for a misdemeanor, or a traffic citation for an arrestable traffic violation.

Staff Findings:

A. Regarding the allegations

1. Officer Carus abused his authority by stopping Mr. Lopes without cause.

UNFOUNDED. MDPD policy authorizes police officers in plainclothes to make traffic stop. Mr. Lopes pled Nolo contendere to the charge of Improper Lane Change on August 21, 2003.

2. Officer Carus used excessive force when he shoved Mr. Lopes against the vehicle, causing soreness to his back/shoulder area.

INCONCLUSIVE. Staff found insufficient evidence to confirm or refute the allegation.

3. Officer Carus threatened Mr. Lopes by stating, “Mira Papi, tienes suerte otro te lleva y te pega un tiro, which translates into English as “Look, consider yourself lucky. Someone else would take you and shoot you.”

INCONCLUSIVE. Staff found insufficient evidence to confirm or refute the allegation. It is the word of Mr. Lopes verses the word of Officer Carus. There were no witnesses present at the time of the alleged comment.

4. Officer Carus called him a jerk two times and told him to shut up ten times.

INCONCLUSIVE. Staff found insufficient evidence to confirm or refute the allegation. The four witnesses did not hear Officer Carus make the comments while they were on the scene.

5. Officer Carus grabbed Mr. Lopes' cellular telephone from his hand and threw it into Mr. Lopes' vehicle.

INCONCLUSIVE. Staff found insufficient evidence to confirm or refute the allegation. It is the word of Mr. Lopes verses the word of Officer Carus. There were no witnesses present at the time.

6. Mr. Lopes told Officer Carus and Officer Mellies that the handcuffs on his wrists were too tight, and the officers failed to take corrective action.

INCONCLUSIVE. Staff found insufficient evidence to confirm or refute the allegation. The four witnesses did not hear Officer Carus make the comments while they were on the scene.

C. Other Findings:

Officer Carus used his discretionary authority as described in MDPD Departmental Manual Chapter 12-01A (Law Enforcement Operations) when he chose to exercise the options provided in the Manual for alternatives to arrest: Issue a promise to appear for an arrestable traffic citation. When Officer Carus found out from backup Officer Mellies that about ten calls were holding in the area, he chose to release Mr. Lopes on the scene so officer Mellies could go back in service.

Staff Recommendation: That the Panel adopt the Staff Findings and conclude the complaint.